

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

Presently before the court is defendants Mortgage Electronic Registration Systems, Inc., et al.'s motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6). (Doc. #6).

Plaintiffs Velazquez, et. al. filed their complaint on April 15, 2011. (Doc. #1). Defendants filed the instant motion on April 18, 2011. (Doc. #6). Plaintiffs never responded to this motion. However, plaintiffs filed an amended complaint on April 29, 2011. (Doc. #8). Pursuant to Federal Rule of Civil Procedure 15(a)(1), plaintiffs filed the amended complaint as of right. Defendants then filed an answer to the amended complaint on June 23, 2011. (Doc. #40).

Pursuant to Nevada Local Rule 7-2(d), “the failure of an opposing party to file points and authorities in response to any motion shall constitute a consent to the granting of the motion.” However, the court will not automatically grant every unopposed motion. In *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995), the Ninth Circuit held that the court had to weigh the following factors before dismissing the action: (1) the public interest in expeditious resolution of litigation; (2) the court’s need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on their merits; and (5) the availability of less drastic sanctions.

In the present case, defendants' motion to dismiss (doc. #6) is moot. The parties have been litigating under the amended complaint filed on April 29, 2011, and the motion to dismiss pertains

1 to the original complaint filed on April 15, 2011. Additionally, the court finds that the fourth
2 *Ghazali* factor weighs heavily against dismissing the action. *See Ghazali*, 46 F.3d at 53. Public
3 policy favors disposing of cases on their merits, and it is not appropriate to dismiss this case based
4 on a moot motion to dismiss. *Id.*

5 Accordingly,

6 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that defendants' motion to
7 dismiss (doc. #6) be, and the same hereby is, DENIED.

8
9 DATED: August 29, 2011.

10 
11

UNITED STATES DISTRICT JUDGE
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28